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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joseph L. Mark et al.

Application No.: 10/649,068

Group No.: Unknown

Filed: August 27, 2003

Examiner: Unknown

For: Introduction System for Minimally Invasive Surgical Instruments

Mail Stop Petition

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

**PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT
(37 C.F.R. SECTION 1.102 and M.P.E.P. SECTION 708.02)**

Applicants hereby petition to make this application special because of actual infringement.

1. Accompanying material

Accompanying this petition is:

(a) a Statement of Facts in Support of Petition to Make Special Because of Actual Infringement;

and

2. Fee (37 C.F.R. Section 1.17(h))

The fee required is to be paid by charging Account 18-0013 the sum of \$130.00.

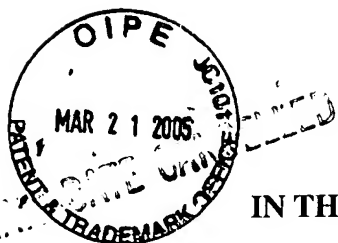
Date: April 18, 2005

Respectfully Submitted,

Kristin L. Murphy, Reg. No.: 41,212
Lionel D. Anderson, Reg. No.: 50,571
Rader, Fishman & Grauer PLLC
39533 Woodward Avenue, Suite 140
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(248) 594-0600
Attorneys for Applicant

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joseph L. Mark et al.

Application No.: 10/649,068 Group No.: To be determined

Filed: August 27, 2003 Examiner: To be determined

For: INTRODUCTION SYSTEM FOR MINIMALLY INVASIVE
SURGICAL INSTRUMENTS

Mail Stop Petition
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT OF FACTS IN SUPPORT OF PETITION TO MAKE SPECIAL
BECAUSE OF ACTUAL INFRINGEMENT (M.P.E.P. SECTION 708.02)**

Dear Sir:

I, Kristin L. Murphy, Attorney for Applicants in this case, hereby state the following:

A.) There is an actual infringement of the above identified invention by products being marketed and sold under the tradenames "Co-axial Cannula MRI" and "Introducer Localization Set for EnCor™ MRI", respectively.

B.) I have reviewed the product sold under the tradenames "Co-axial Cannula MRI" and "Introducer Localization Set for EnCor™ MRI" by C.R. Bard, Inc. of Murray Hill, New Jersey and SenoRx, Inc., of Aliso Viejo, California, respectively. I have also reviewed the above identified patent application Serial No. 10/649,068, filed on August 27, 2003 which claims priority to U.S. provisional patent application Serial No. 60/416,755 filed on October 7, 2002. Based on my review, it is my opinion that the devices being marketed and sold under the tradenames "Co-axial Cannula MRI" and "Introducer Localization Set for EnCor™ MRI", respectively, infringe the invention as disclosed and claimed in U.S. patent application Serial No. 10/649,068.

C.) I have made a careful and thorough search of the prior art. A list of the most closely related reference(s) is provided below. A copy of each reference listed below accompanies this statement.

U.S. Patent Nos.:

5,281,197

5,289,831

6,161,034

6,251,418

6,347,241

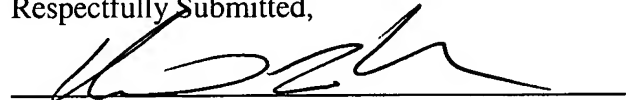
6,725,083

6,863,676

2. The devices that I allege infringes the above identified invention was first discovered to exist on or about August 12, 2004 ("Co-axial Cannula MRI") and on or about October 14, 2004 ("Introducer Localization Set for EnCorTM MRI"), respectively.

Date: April 18, 2005

Respectfully Submitted,



Kristin L. Murphy, Reg. No.: 41, 212

Lionel D. Anderson, Reg. No.: 50, 571

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Attorneys for Applicant



Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FEE
Under 37 CFR 1.17(f), (g) & (h)
TRANSMITTAL

(Fees are subject to annual revision)

Send completed form to:

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	10/649,068-Conf. #4645
Filing Date	August 27, 2003
First Named Inventor	Joseph L. Mark
Art Unit	N/A
Examiner Name	Not Yet Assigned
Attorney Docket Number	65937-0037

Enclosed is a petition filed under 37 CFR 1.102(d) that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 130.00 is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

Payment of Fees (small entity amounts are NOT available for the petition fees).

☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 18-0013 :

☒ Petition fee under 37 CFR 1.17(f), (g) or (h) ☒ Any deficiency of fees and credit of any overpayments

Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of \$ _____ is enclosed.

☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462

For petitions filed under:

- § 1.53(e) – to accord a filing date.
- § 1.57(a) – to accord a filing date.
- § 1.182 – for decision on a question not specifically provided for.
- § 1.183 – to suspend the rules.
- § 1.378(e) – for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) – to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463

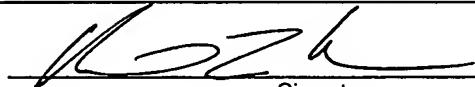
For petitions filed under:

- § 1.12 – for access to an assignment record.
- § 1.14 – for access to an application.
- § 1.47 – for filing by other than all the inventors or a person not the inventor.
- § 1.59 – for expungement of information.
- § 1.103(a) – to suspend action in an application.
- § 1.136(b) – for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 – for review of refusal to publish a statutory invention registration.
- § 1.296 – to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 – for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c) – for patent owner requests for extension of time in ex parte reexamination proceedings.
- § 1.956 – for patent owner requests for extension of time in inter partes reexamination proceedings.
- § 5.12 – for expedited handling of a foreign filing license.
- § 5.15 – for changing the scope of a license.
- § 5.25 – for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464

For petitions filed under:

- § 1.19(g) – to request documents in a form other than that provided in this part.
- § 1.84 – for accepting color drawings or photographs.
- § 1.91 – for entry of a model or exhibit.
- § 1.102(d) – to make an application special.
- § 1.138(c) – to expressly abandon an application to avoid publication.
- § 1.313 – to withdraw an application from issue.
- § 1.314 – to defer issuance of a patent.



Signature

Kristin L. Murphy

Typed or printed name

April 18, 2005

Date

41,212

Registration No., if applicable

Petition Fee Transmittal

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: April 18, 2005

Signature: 

(Kathryn L. Nash)